

EXHIBIT 3

From: Scavuzzo, Bruce <bruce.scavuzzo@sonyatv.com>
Sent: Tuesday, August 11, 2015 4:29 PM
To: Zakarin, Donald S.
Subject: FW: LET'S GET IT ON/THINKING OUT LOUD
Attachments: Let's Get It On Thinking Out Loud Aanalysis by L Ferrara.pdf; Let's Get It On v Thinking--Ricigliano.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

From: Scavuzzo, Bruce
Sent: Monday, June 08, 2015 11:29 AM
To: Hook, Alison
Subject: FW: LET'S GET IT ON/THINKING OUT LOUD

From: Scavuzzo, Bruce
Sent: Wednesday, April 15, 2015 6:19 PM
To: keisha@frankandrice.com
Cc: Brodsky, Peter; Moot, Guy (Guy.Moot@sonyatv.com); Booth, William; Sandmark, Dag
Subject: LET'S GET IT ON/THINKING OUT LOUD

BY EMAIL

April 15, 2015

Keisha D. Rice, Esq.
Frank & Rice, P.A.
325 W. Park Ave.
Tallahassee, FL 32301

Dear Ms. Rice:

I work with Peter Brodsky at Sony/ATV Music Publishing. He forwarded me your recent email regarding your claim, on behalf of the Ed Townsend heirs, that the Ed Sheeran song THINKING OUT LOUD infringes the copyright in the Gaye/Townsend composition LET'S GET IT ON.

As a major music publisher, Sony/ATV takes allegations of copyright infringement very seriously. I believe that Peter explained to you that one of our the first steps when we are advised of a claim is to obtain an opinion from a musicologist. In this particular instance, we have obtained two opinions. Attached to this letter are reports from Lawrence Ferrara and Anthony Ricigliano, two very reputable musicologists. As you will see, they conclude that there is no infringement here, since the primary similarity between the two songs appears to be an extremely common chord progression.

I am simultaneously circulating these reports to representatives of Mr. Sheeran and the Gaye estate.

Please let me know if you have any questions after your review of the attached analyses. As I am sure you will understand, I must reserve all rights and remedies of Sony/ATV and EMI Music Publishing with respect to this matter.

Very truly yours,

Bruce Scavuzzo

Senior Vice President, Business and Legal Affairs

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DRAFT PRIVILEGED AND CONFIDENTIAL WORK PRODUCT

“LET'S GET IT ON” (“Let's”) and “THINKING OUT LOUD” (“Thinking”)

TEMPO

“Let's” ~81-85 BPM

“Thinking” 79 BPM

METER

“Let's” 4/4

“Thinking” 4/4

KEY

“Let's” Eb major

“Thinking” D major

INSTRUMENTATION

Both songs contain:

Drums

Bass

Electric guitar

Piano

Lead vocals

Background vocals

In “Let's” only:

Saxophones

Strings

Flute

Congas

Hand claps

In “Thinking” only:

Acoustic guitar

STRUCTURE

There are no significant structural similarities.

HARMONY

Both songs use a similar (but not identical) chord progression in the same harmonic rhythm of two chords per bar in which the second and fourth chords are anticipated (*i.e.*, they occur on the second half of beat 2).

“Let’s”: I ii7 IV V

“Thinking”: I I/3 IV V

Due to the improvisational nature of some of the instrumental parts, particularly in the piano part in both songs, the chord progressions in both songs have numerous variations and chord extensions which I have not transcribed given the “preliminary” status of this analysis.

The basic bass line in both songs is on scale degrees 1-3-4-5, in which 3 and 5 are anticipated, mirroring the harmonic rhythm (and the I IV and V chords in the case of scale degrees 1-4-5). However, there are numerous embellishments and *ad libs* in both bass lines which I have not fully transcribed at this juncture.

MELODY

There are no significant similarities in the vocal melodies.

By way of difference, the vocal melody in “Thinking” is diatonic (*i.e.*, based on notes in the major scale), while the vocal melody in “Let’s” contains several flattened thirds which are outside of the major scale.

LYRICS

There are no significant lyrical similarities.

By way of difference, the lyrics in “Let’s” are about immediate sexual attraction, while the lyrics in “Thinking” are about long-term romantic love.

RHYTHM

There are no significant rhythmic similarities, other than the similarities in harmonic rhythm and the rhythm of the bass lines.

PRIOR ART

The I ii IV V chord progression in “Let’s” was commonplace by 1973, the year in which “Let’s” was released, which undercuts a claim of “originality” of that chord progression in “Let’s”. Importantly as analyzed above, the second chord in the chord progressions in “Let’s” and “Thinking” is *not* the same. During a very preliminary search for prior art, I found the I ii I V V chord progression(that is in “Let’s” in following songs released prior to 1973:

“Georgy Girl” The Seekers
“Easy Now” - Eric Clapton
“Once Upon a Dream” - Billy Fury
“You Baby” - The Turtles
“Fun Fun Fun” - The Beach Boys
“True Love Ways” - Buddy Holly
“Summer Song” - Chad & Jeremy
“Hurdy Gurdy Man” - Donovan
“I Started a Joke” - The Bee Gees

Moreover, the chord progressions in all of the above appear to have a harmonic rhythm of 2 chords per measure and are accompanied by the 1-3-4-5 bass line.

In “Georgy Girl,” the second and fourth chords are anticipated, and the second bass note is anticipated. Beto Diaz’ version of “Georgy Girl” has *both* anticipated chords *and* bass notes. (I did not find a release year for Diaz, but the production quality and instrumentation indicate that it was recorded in the mid-to-late 1960s.) The Beto Diaz version of “Georgy Girl” contains all of the similarities, and a chord progression that is more similar to that in “Let’s” because the second chord in the 4-chord progression in “Let’s” and “Thinking” is *not* the same, as analyzed above.

Moreover, there are almost certainly multiple songs released **after 1973** that contain the same similarities, which leaves open the possibility that “Thinking” was inspired by a song other than “Let’s Get It On.” For example, Lionel Richie’s “Do It To Me” (1992) seems to contain all of the similarities, and Michael Jackson’s “Man In the Mirror” (1987) is very close.

Qualification

Given that this summary represents a “preliminary” analysis, I did not transcribe every variation of the four-chord progression and bass line in both songs. It is possible that there are additional similarities between particular iterations. For example, the attached transcription shows that the first iteration of the bass line in “Thinking” has a leap down from 1 to 3 that is similar to “Let’s.” Both songs also contain Vsus4 in some iterations.

My transcriptions are set forth below.

“Let’s Get It On”

Bass line and chords in the recorded key

Time: 0:02

Music notation for "Let's Get It On". The bass line consists of eighth notes. Chords shown are E♭, Gm⁷, A♭, and B♭(sus4). Measure numbers 3 and 8 are indicated below the staff.

“Thinking Out Loud”

Bass line (as played on guitar) and chords in Verse 1 in the recorded key

Time: 0:00

Music notation for "Thinking Out Loud" in Verse 1. The bass line consists of eighth notes. Chords shown are D⁵, D/F♯, G⁵, and A⁵. Measure numbers 3 and 8 are indicated below the staff.

“Thinking Out Loud”

Bass line and chords in Chorus 1 in the recorded key

Time: 1:13

Music notation for "Thinking Out Loud" in Chorus 1. The bass line consists of eighth notes. Chords shown are D, D/F♯, G, and A⁹(sus4). Measure numbers 3 and 8 are indicated below the staff.

Note: The A⁹(sus4) chord “bar 2 is the result of the guitar playing A5, while the piano plays G/A.

“Let’s Get It On” / “Thinking Out Loud”

Comparative transcription of the bass lines and chords in C major

C Em⁷ F G^(sus4)

"Let's Get It On" 0:02

C⁵ C/E F⁵ G⁵

"Thinking Out Loud" 0:00

C C/E F G^{9(sus4)}

"Thinking Out Loud" 1:13

3 C Em⁷ F G

C⁵ C/E F⁵ G⁵

C C/E F G

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ATTORNEY WORK PRODUCT DRAFT

April 7, 2015

Sony/ATV Music publishing
550 Madison Avenue
New York, NY 10022
ATTN. Dag Sandsmark, Business & legal Affairs

Dear Mr. Sandsmark:

I listened to a recording of the song *Let's Get it On* (hereafter *Let's*) recorded by Marvin Gaye and a recording of the song *Thinking Out Loud* (hereafter *Thinking*) recorded by Ed Sheeran. Also reviewed were musical transcriptions (prepared by Donato Music) and the published sheet music of each song

After comparing and analyzing the music and lyric content of these works, I concluded that the song *Thinking* does not contain any significant or protectable lyric or musical material that is substantially similar to any lyric or protectable musical material contained in the song *Let's*.

Although these songs contain musical material that is similar, particularly in the use of a similar four-chord harmonic “bed” using the bass line I-III-IV-V, they do not share any significant similarity in lyric content, melodic content (pitch series, rhythm, melodic development). The repetitive harmonic pattern from each song is given below, for comparative purposes they have been transposed to the key of C major (standard musicological procedure).

<i>Let's</i>	C	E minor	F	G7
<i>Thinking</i>	C	C/E	F	G

Although both utilize a similar repetitive harmonic progression, the actual bass line, while similar in rhythm and pitch is different (similarity in pitch is to be expected due to the use of the chord similarity). However, the harmonic pattern I-III-IV-V (C-E-F-G) utilized in *Let's* is not a protectable pattern, nor is it original with *Let's*.

It is significant and important to recognize that although these songs make use of a similar harmonic pattern the principal melodic material placed above these chords is dramatically different in pitch series rhythm and melodic structure.

Furthermore, when the harmonic pattern is replaced with a new harmonic material the patterns utilized in *Thinking* are different in structure and content from the patterns introduced within *Let's*.

The four-bar harmonic patterns in *Let's* that occupy the following bars are given below. Observe that the two four-bar patterns used in the next 8 bars of *Thinking* are dramatically different in content and harmonic rhythm (number of chords per bar) from the material utilized in *Let's*.

<i>Let's</i>	F	F	C	E min	F G	F	F	C E min	F G
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<i>Let's</i>	F	F	C	E min	F G	F	D min	G7	G7
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<i>Thinking</i>	Dmin7 F	G C	Dmin7 F	G	Dmin7 F	G A min	Dmin7 F	G
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It is also important to recognize that it is not indicative of copying for two songs to make use of the same or similar harmonic or basic bass pattern throughout a section of the song. Furthermore in popular music the basic harmonic “bed” that is utilized is often a simple four-chord pattern. For example, the patterns I-III-IV-V, (for example *Georgy Girl* 1966), I-VI-II-V and I-VI-IV-V are common four-chord/bass patterns utilized within the popular idiom.

Finally, I did not locate any protectable lyric phrases or musical material that may be considered to be substantially similar or that was indicative of copying and concluded that overall these are two distinctively different musical compositions.

Please let me know if you have any questions or if you require a more detailed musicological report.

Sincerely,

Anthony Ricigliano
Musicologist